IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4867 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAILALBHAI NARAYNDAS PATEL - Appellant(s)
Versus
GUJARAT STATE ROAD TRANSPORT CORPORATION - Defendant(s)

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Appearance :
MR JIGAR PATEL for MR KM PATEL for Appellant(s) : 1,
MRS VASAVDATTA BHATT for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/02/2007

ORAL JUDGMENT

1. This is an appeal under Section 173 (1) of the Motor Vehicles Act, 1988 [hereinafter referred to as the “Act”], preferred by the original claimant to challenge

the judgment and award dated 10th January, 2001 passed by MACT [Auxi.] Panchmahals at Godhra in MACP No. 1222 of 1994. The Claims Tribunal has of course carried out the exercise to assess the quantum of compensation which could have been awarded to the appellant, had the appellant not been found guilty of the negligence.

2. The accident in question occurred on 21st January, 1994. The appellant was riding on his scooter and he was going from Divada colony to his village Malvan. According to him, he was driving his vehicle at a moderate speed and in careful manner. When he reached the bus stop of village Mahapur, respondent no. 1 was going ahead with the bus belonging to respondent no. 2. The appellant tried to overtake the bus and, therefore, he blew the horn. Respondent no. 1 gave a signal permitting him to overtake the bus. However, when the appellant was in the process of overtaking the bus, respondent no. 1 all of a sudden took the vehicle slightly on the right. As a result of the same, it dashed against the bus and then landed in a ditch on the northern side of the road. The appellant sustained serious injuries including two fractures. Initially, he was treated at the Primary Health Centre and thereafter, he was shifted to Godhra and from there to Civil Hospital at Ahmedabad. After considerably long hospitalization, he was discharged from

the hospital. According to him, he tried to lodge complaint with the Police, but it was not entertained and, therefore, he directly filed it in the Court of Judicial Magistrate, First Class, on 19th February, 1994 i.e., almost one month after the accident. In these circumstances, the appellant filed the aforesaid claim petition to seek compensation of Rs. 1 lakh.

3. At the hearing, the parties led evidence oral as documentary. On the basis of the material produced before it, the Tribunal arrived at a conclusion that the accident had occurred solely due to negligence of the appellant. The Claims Tribunal thereafter assessed the compensation, which could have been awarded to the appellant and in its opinion, the appellant would have been entitled to receive in all a sum of Rs.73,780=00. However, the Tribunal dismissed the claim, since it found the appellant responsible for the accident. Hence, this appeal.

4. Having heard the learned advocates for the appellant and respondent and having perused the record and proceedings of the case, it appears that so far as the accident in which the appellant received injuries is concerned, it is not in dispute. The dispute is with regard to the manner in which it happened. However, the

appellant has also raised the dispute in this appeal that the quantum of compensation assessed by the Tribunal is inadequate and the Tribunal ought to have awarded the entire claim of Rs. 1 lakh. So far as the issue of negligence is concerned, the learned advocate for the appellant has drawn my attention to the documentary evidence as well as oral evidence of the appellant and respondent no. 1. He has placed extensive reliance on the contents of the panchnama to substantiate his submission that it was respondent no. 1 who was negligent and not the appellant. As against that the learned advocate for the respondent has supported the finding with regard to negligence given by the Tribunal and has submitted that since the accident occurred solely due to negligence of the appellant, this appeal be dismissed.

5. To appreciate whether the appellant was solely negligent or was partially negligent or that he was not at all negligent, it will be necessary to appreciate the documentary as well as oral evidence. The relevant document is panchnama of the scene of occurrence which is at Exh. 23. It shows that at the place where the accident occurred the width of the tar road is 12 feet. The road has shoulders of 5 feet each, on both the sides. At the time when the panchnama was drawn the bus was standing at the pick-up stand of Mahapur. The panchas have noted that

the right side front as well as rear wheel were at a distance of 3 feet from the northern border of the road whereas, the front and rear wheel of the left side of the bus were 1 foot away from the southern border. It therefore, shows that there was hardly space of 3 feet available for any other vehicle to clear stationary bus as it was standing at the time of the panchnama. Even if the say of respondent no. 1 is taken to be true, it appears that respondent no. 1 had not taken proper care to halt the bus in a manner which could not have caused any hindrance to other traffic. Considering the fact that there was about 6 feet space available for respondent no. 1 between the sign board and the left hand side wheel of the bus, respondent no. 1 could have left open substantial portion of the road on its right, for smooth flow of the traffic on that road. However, he had in a careless manner halted the bus almost in the middle of the road. Whether the bus was in motion or it was stationary at the time of impact with the scooter of the appellant is not very certain. There is word against word on this aspect. The appellant has deposed that it was in motion and respondent no. 1 gave signal permitting him to overtake and while he was in the process of overtaking, the accident occurred. As against that the version of respondent no. 1 is that the bus was stationary, the passengers had already got down and the conductor had

given signal to start it by ringing the bell. Exactly at that point of time, he heard some noise from behind and when he came out to check what had happened, he saw the appellant lying in injured condition. There is slight damage noticed on the rear side of the bus which could have been caused due to the impact. When this is the state of evidence, it is difficult to completely accept the word of the appellant, especially when there is no supportive evidence in the form of any other eye witness. But the fact that respondent no. 1 had parked the vehicle in such a manner that there was every possibility of such accident occurring, he cannot be absolved completely from his liability. In my opinion, his negligence is also to the extent of 50% in contributing the accident. He is, therefore, guilty of contributory negligence to the extent of 50% and to that extent the finding of the Tribunal is erroneous and it is quashed and set aside.

6. So far as the quantum of compensation is concerned, the Claims Tribunal has carried out the exercise in detail. The appellant has claimed Rs.1 lakh by way of compensation. The Tribunal assessed it at Rs.83,780=00. I have perused the discussion on this issue. By and large, the compensation determined by the Claims Tribunal is just and proper except under first head i.e., loss of prospective income. According to the

medical evidence, the appellant had suffered disability to the extent of 18%. However, the disability of the body as a whole, it has been assessed at 9%. So far as the income of the appellant is concerned, it shows that he was working as a teacher and drawing salary of RS.5,052=00 per month. He was aged 48 years at the time when the accident occurred. For assessing future loss of income, the Tribunal has made calculation on the basis of his salary on the date of the accident. However, the Tribunal lost sight of the fact that with the passage of time, his salary might have increased and it would not have remained static at Rs.5,052=00. To that extent, an error has been committed by the Tribunal. Considering the circumstances on record, the loss of prospective income can be worked out on the basis of Rs.6,000=00 per month as salary of the appellant, Rs.540=00 would be the monthly loss and Rs.6,480=00 would be the annual loss. The Tribunal has applied the multiplier of 8 which is proper and that would bring the future loss of income to Rs.51,840=00. Thus, additional amount of Rs.8,160=00 can be awarded under the said head. However, as already discussed above, I have held the appellant 50% negligent and hence 50% of the amount awarded to the appellant has to be deducted. He will, therefore, be entitled to receive Rs.40,970=00 together with interest at the rate of 9% per annum from the date of the application till

realization and proportionate costs. The amount already received by the appellant i.e., Rs.12,000=00 to be adjusted while awarding the amount.

In the result, the appeal is allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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